Supreme Court of the United States

OCTOBER TERM, 1970

No. 1520 Misc.

MARGARET RUTH HORTON,

Petitioner,

v

STATE OF NORTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW

This case was originally tried in the Superior Court of Iredell County, North Carolina, which is a court of general jurisdiction, at the October 21, 1968 Term. The petitioner was tried on an indictment charging conspiracy to commit murder and upon her plea of not guilty, she was tried by a jury, found guilty, and received a sentence of imprisonment for seven to ten years.

On appeal, the North Carolina Court of Appeals found no error. The case is reported as STATE v HORTON, 5 N. C. App. 141, 161 S. E. 2d 871 (1969).

The North Carolina Supreme Court granted certiorari to review the decision of the North Carolina Court of Appeals and upon consideration of the case, affirmed the decision of the North Carolina Court of Appeals. The case is reported as STATE v HORTON, 275 N. C. 651, ... S. E. 2d .... (1969).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. Section 1254.

QUESTIONS PRESENTED

(1) WAS DEFENDANT DEPRIVED OF CONSTITUTIONAL RIGHTS IN CONNECTION WITH ANY SEARCH AND SEIZURE?

(2) WERE THE DEFENDANT'S CONSTITUTIONAL RIGHTS PROTECTED IN BEING HELD IN CUSTODY WITHOUT COUNSEL?

NOTE: The defendant includes in her list of questions certain issues regarding an alleged change in the bill of indictment and a statement regarding alleged perjured testimony. The record is devoid of evidence of either of these circumstances and these issues will therefore not be treated by the State.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

While the State of North Carolina does not agree, the petitioner contends that the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States are involved.

Since the defendant was charged with the common law offense of consipracy, no statutes are involved.

STATEMENT

This is in response to a petition for writ of certiorari to review the judgment of the Supreme Court of North Carolina filed 19 November 1969, affirming petitioner's sentence of imprisonment for 7 to 10 years for conspiracy to murder her estranged husband.

The indictment alleges that defendant Horton consipired with Robert Lee James and Carl Deal to murder Lee Roy Horton. James and Deal were not indicted, and both testified for the State.

James' testimony shows: That he knew defendant in January 1967; that in April, 1967, she came to his home in Statesville at 9:00 o'clock one night. Defendant gave him a note bearing her telephone number. He called her the next day and arranged to meet defendant on the Charlotte Highway about 8-9 o'clock that night. They went to a farm house owned by the defendant, and she told James that her husband was a fireman in Statesville; that she was having trouble with him. They arranged to meet the next night.

During the next day, James went to the restaurant where defendant worked and talked with her and they met that night. Defendant asked James if he knew someone that he could get to do something to her husband (R pp 4-5).

James said " 'Well, I don't know. What do you want to get done to him? Do you want him beat up or roughed up or what do you want?' She said, 'I want a little more than that.' I said, 'I don't know, I might know a man who might could do something like that for you.' She said, 'What do you think it would cost me?' I said, 'I have no idea. I can contact the man by phone and see if we can get him down here. I have to get him from New York.' I said, 'Would you like for me to contact him,' and she said, 'Yes.' " (R p 5)

James then made a phone call while defendant could hear what was said. The call was to Carl Deal in Taylorsville (R pp 5-6).

Deal indicated he was interested in making some money, and James told defendant that the man from New York would be at the Charlotte Airport on Wednesday night.

On Wednesday, defendant met James on the Charlotte Highway and drove him to Charlotte in her car. After telling

defendant that he would have to get some .38 bullets for a .38 pistol, because Deal wanted him to bring them, they stopped in Charlotte and James purchased the bullets (R p 6).

Defendant and James went on to the Charlotte airport, but Deal did not appear. They went back to Statesville and returned to the Charlotte airport the next night. James met Deal in the airport, told him everything was set, and bought Deal a pair of sunglasses. He gave Deal the .38 pistol while in the airport, then they went to the car where defendant was waiting.

Deal was introduced by James to defendant as Joe Fratt. They started back to Statesville and defendant stopped at a service station and purchased a flashlight (R p 7).

Defendant asked Deal (Fratt) what he was going to charge for the job, and he said Five Thousand Dollars (R p 7). She wanted to know if that would take care of James' part and how they wanted the money. Defendant gave Deal one-half of his part that night and the rest the next night, making a total of $2,500 (R pp 7-9).

On the trip from the airport to the farmhouse, Deal asked for the bullets, broke down the pistol and put the bullets in the gun so defendant could see him (R p 7).

They went to the farmhouse owned by defendant and located an upstairs window where they could see defendant's husband when he came to the farmhouse in the morning or late afternoon, as was his custom (R pp 7-8).

Defendant gave James some pictures of her husband that night at the farmhouse, and had given James some pictures of him prior to that night, and had described her husband to him. (R p 8).

James kept the pictures in the glove compartment of his car for 5-6 months, until he gave them to the officers (R p 8).

The first $1,200 was given to Deal at the farmhouse.

James and Deal were supposed to wait at the farmhouse, but he drove Deal back to Taylorsville. The next day James and Deal went to the farmhouse, and put cigarettes around the window in the room. They again met defendant at the rear of a furniture building, where she gave Deal $1,300 more, and he told her they were going to the farmhouse that night because the man was going through with what he was supposed to do and had to leave (R p 10).

James called defendant the next day and told her that her husband did not show up that night; that Fratt (Deal) had to leave town, but would be back within a few days to do the job (R p 10).

James then had Deal to call defendant and pretend he was a "trusty" at the Raleigh jail, and that he was calling for Joe Fratt who was being held for carrying a concealed weapon, and for her to come to Raleigh to get Fratt out on bond (R p. 10).

Defendant later contacted James and he met her at the farmhouse; defendant told James "You fellows took me didn't you?"

James said " 'What do you mean?' She said, 'You know what I mean. You took Twenty-Five Hundred Dollars off me.' I said, 'Well, I don't know what you are talking about.' She said, 'I want you to write me a check for twenty-five hundred dollars.' I refused to write the check and she said well let's go to Raleigh and see about Mr. Fratt. I said, 'No, I'm not going anywhere. I'm through with it right now.' She had a big handbag and opened it and put her hand inside. I took the pistol out of my pocket and told her to drop the bag. I said, 'Mrs. Horton, I do not want to hear anymore about this. If I do, I am going to go and tell your husband what you are trying to do.' She said, 'You wouldn't dare.' " (R p 11)

When James called Deal, he told him she wanted to get her husband killed (R pp 11-12).

On cross-examination, James testified that he contacted

Deal because he wanted to get somebody defendant didn't know, because if it was somebody around here that would kill him, defendant might know about it (R p 13).

James further stated on cross-examination that he and Deal never intended to kill defendant's husband; that they were interested in getting the money from defendant (R pp 13-14). But on page 14 of the record, James testified that he, Deal and defendant never agreed to kill her husband, "in that many words, no," but on the first conversation with James (R p 5) that she wanted more done than "beating him up"; James "pictured in my mind what she wanted. She must want something a little more than that to pay $2,500" (R p 14); that he received the money for doing just what we were talking about, to kill him (R p 14).

James then testified that it was on the third night that he and defendant went to the farmhouse that she wanted to know if he could get someone to do something to her husband, and he agreed to get someone in touch with her, and that nothing was said that night about money, but when the subject of money was brought up, he never agreed to hurt her husband, but only to put her in touch with someone.

After James heard about defendant's husband being bombed, he went to Mr. Zeb Morris and talked to the local police (R p 16).

The testimony of Carl Deal, a State's witness, was largely corroborative of James' testimony, as to their contact with defendant, the receipt of the money from defendant, and that he didn't intend to harm defendant's husband.

State's witness, Lt. Clyde Lloyd, testified on cross-examination that James and Deal told him about their agreement with the defendant; that they told him they never intended to harm defendant's husband; and that he was satisfied that was the truth (R p 25).

Defendant offered no evidence.

ARGUMENT

The Respondent has already noted above that two issues raised by the defendant are completely without factual support in the Record, *i.e.*, defendant's allegations that the bill of indictment was altered and that the testimony of State's witnesses was perjured.

Likewise, the other questions which defendant presents are without factual basis. There is no evidence of which defendant could claim constitutional right against illegal search and seizure. And defendant had competent private counsel from her arrest. The Record is devoid of any evidence of an in-custody confession or confrontation for identification purposes for which absence of counsel could be important. Certainly, there is no evidence that defendant was deprived of counsel and, when retained, defendant employed them.

CONCLUSION

The Respondent respectfully requests that the petition for a Writ of Certiorari be denied.

Respectfully submitted,

ROBERT MORGAN
Attorney General of North Carolina

(Mrs.) CHRISTINE Y. DENSON
Staff Attorney

RICHARD N. LEAGUE
Staff Attorney

Counsel for the State of North Carolina,
Respondent

Justice Building
P. O. Box 629
Raleigh, North Carolina 27602

Telephone (919) 829-3328